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Attorney for Plaintiff

FILED
08 FEB 21 PM 3:50
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

HST Automotive, LLC, a California Limited Liability Company; and Ronaele, Inc., a Nevada Corporation; Plaintiffs, vs. DENICE HALICKI, an individual; THE ORIGINAL GONE IN 60 SECONDS, LLC, a Delaware Limited Liability Company; HALICKI FILMS, LLC, a California Limited Liability Company; and ELEANOR LICENSING, LLC, a Delaware Limited Liability Company; and DOES 1 – 10, inclusive; Defendants	Case No.: '08 CV 0337 JAH RBB **COMPLAINT FOR DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF TRADEMARK, TRADE DRESS, AND COPYRIGHT**

Plaintiffs HST Automotive, LLC, and Ronaele, Inc., (collectively referred to as "Plaintiffs") hereby complain as follows:

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ORIGINAL

THE PARTIES

1. Plaintiff HST Automotive, LLC, a California Limited Liability Company, with its principal place of business in San Diego County, State of California.

2. Plaintiff Ronaele, Inc., a Nevada Corporation, with its principal place of business in Henderson Nevada.

3. Plaintiffs are informed and believe, and based thereon allege, that Defendant Denice Halicki is an individual having a principal place of residence in Los Angeles County, State of California.

4. Plaintiffs are informed and believe, and based thereon allege, that Defendant THE ORIGINAL GONE IN 60 SECONDS, LLC is a Delaware Limited Liability Company, with its principal place of business in Los Angeles County, State of California.

5. Plaintiffs are informed and believe, and based thereon allege, that Defendant HALICKI FILMS, LLC is a California Limited Liability Company, with its principal place of business in Los Angeles County, State of California.

6. Plaintiffs are informed and believe, and based thereon allege, that Defendant ELEANOR LICENSING, LLC is a Delaware Limited Liability Company, with its principal place of business in Los Angeles County, State of California.

7. Plaintiffs are not aware of the true names and capacities of Defendant DOES 1 through 10, inclusive, are therefore sue these defendants by such fictitious names. When the true names and capacities of Defendants DOES have been ascertained, Plaintiffs will amend the Complaint to set forth such specific facts.

8. Defendants DENICE HALICKI, THE ORIGINAL GONE IN 60 SECONDS, LLC, HALICKI FILMS, LLC, and ELEANOR LICENSING, LLC, and DOES 1 – 10, collectively referred to as "Defendants."

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JURISDICTION AND VENUE

10. Jurisdiction in this Court is proper as this Complaint concerns matters having exclusive federal jurisdiction, including the Trademark Act of 1946, as amended, 15 U.S.C. §1051 et seq. , The Copyright Act of 1976, as amended, 17 U.S.C. §401 et seq., and California common law.

11. This Court has personal jurisdiction over Defendants as they are conducting business in California, and their principal place of business is within California.

12. Venue is proper in this matter as Plaintiffs are engaged in business, and Defendants have been engaging, and will continue to engage, in business within this judicial district.

BACKGROUND FACTS

13. On February 7, 2008, Defendants transmitted through their attorney, a letter alleging Trademark, Trade Dress, and Copyright Infringement violations. A copy of the letter is attached as Exhibit 1.

14. Defendants specifically allege that Plaintiffs have been manufacturing, producing and/or selling automobiles under the name "RONEALE".

15. Defendants specifically allege that the automobiles provided by Plaintiffs are exact replicas of a vehicle featured in the motion picture "Gone in 60 Seconds."

16. Defendants specifically allege that Defendants "own the exclusive rights to the copyright, trademark, trade dress (which includes the look) of the character of "Eleanor" from the motion picture."

17. Plaintiffs allege that any vehicles produced by Plaintiffs are not exact replicas of any vehicle featured in the movie "Gone in 60 Seconds."

18. Plaintiffs allege that any vehicles produced by Plaintiffs do not infringe any copyright, trademark or trade dress rights owned by Defendants.

19. On information and belief, and based thereon, Plaintiffs allege that Defendants do not own the exclusive rights to the copyright, trademark or trade dress of the character of "Eleanor" from the motion picture.

FIRST CLAIM FOR RELIEF

DECLARATORY RELIEF OF NON-INFRINGEMENT OF TRADEMARK

13. Plaintiffs reallege and incorporate by this reference all prior allegations as though fully stated herein.

14. Plaintiffs dispute the ownership of any "Eleanor" trademark by Defendants.

15. Plaintiffs, on information and belief, and based thereon allege, that the true owner of the Eleanor trademark is not Defendants, but rather, the original creator of the 1967 Mustang Shelby GT-500 Fastback, namely Carroll Shelby.

16. Moreover, even assuming pro-arguendo that Plaintiffs produced a vehicle bearing the name "Roneale", Plaintiffs allege that such use is not a violation of any trademark rights which may exist in the name "Eleanor".

17. Moreover, even assuming pro-arguendo that Plaintiffs produced a vehicle bearing the name "Roneale", Plaintiffs allege that such use is not a violation of any trademark rights of Defendants.

SECOND CLAIM FOR RELIEF

DECLARATORY RELIEF OF NON-INFRINGEMENT OF TRADE DRESS

18. Plaintiffs reallege and incorporate by this reference all prior allegations as though fully stated herein.

19. Plaintiffs dispute the ownership of any trade dress by Defendants.

20. Plaintiffs, on information and belief, and based thereon allege, that the true owner of the Eleanor trade dress is not Defendants, but rather, the original creator of the 1967 Mustang Shelby GT-500 Fastback, namely Carroll Shelby.

21. Moreover, even assuming pro-arguendo that Plaintiffs produced a vehicle having the appearance of the original 1967 Mustang Shelby GT-500 Fastback, Plaintiffs allege that such use is not a violation of any trade dress rights of Defendants.

THIRD CLAIM FOR RELIEF

DECLARATORY RELIEF OF NON-INFRINGEMENT OF COPYRIGHT

22. Plaintiffs reallege and incorporate by this reference all prior allegations as though fully stated herein.

23. Plaintiffs dispute the ownership of any "Eleanor" copyright by Defendants.

24. Plaintiffs, on information and belief, and based thereon allege, that the true owner of any copyright is not Defendants, but rather, the original creator of the 1967 Mustang Shelby GT-500 Fastback, namely Carroll Shelby.

25. Moreover, even assuming pro-arguendo that Plaintiffs produced a vehicle appearing like the 1967 Mustang Shelby GT-500 Fastback, Plaintiffs allege that such use is not a violation of any copyright rights of Defendants.

WHEREFORE, Plaintiffs pray for judgment as follows:

1. Plaintiffs be granted a Declaratory Judgment of Trademark Non-Infringement with regard to Defendants allegations of trademark infringement of the word "Eleanor;"

2. Plaintiffs be granted a Declaratory Judgment of Trade Dress Non-Infringement with regard to Defendants allegations of trade dress infringement of the "look" of the mustang featured in the motion picture "Gone in 60 Seconds;" and

3. Plaintiffs be granted a Declaratory Judgment of Copyright Non-Infringement with regard to Defendants allegations of copyright infringement of any rights in the motion picture or vehicle identified as "Eleanor."

Dated this February 19, 2008

Gary L. Eastman, APLC

Gary L. Eastman, Esq.
Attorney for Plaintiffs

JURY TRIAL DEMAND

Plaintiffs hereby demand a trial by jury.

Dated this February 19, 2008

Gary L. Eastman, APLC

Gary L. Eastman, Esq.
Attorney for Plaintiffs

EXHIBIT 1

Letter from Defendants' Counsel alleging Trademark, Trade Dress and Copyright Infringement

DREIER STEIN KAHAN
BROWNE WOOLLS GEORGE

7013-001/603664

February 7, 2008

VIA FACSIMILE AND OVERNIGHT DELIVERY
Gary Beck
HST Automotive, LLC
8985 Crestmar Pointe
San Diego, California 92121

VIA OVERNIGHT DELIVERY
Todd Boretto
Ronaele, Inc.
1367 Cadence Street
Henderson, Nevada 89052

Re: Infringement of "Eleanor" Trademark, Trade Dress, Copyright

Dear Messrs. Beck and Boretto:

This firm represents Denice Shakarian Halicki, The Original Gone in 60 Seconds, LLC, Halicki Films, LLC and Eleanor Licensing, LLC (collectively, the "Halicki Parties").

We are informed and believe that your companies are and have been manufacturing, producing and/or selling automobiles under the name "Ronaele" – which simply is the name "Eleanor" spelled backwards – through an agreement with Ronaele, LLC, Ronaele Mustang, Inc. and/or Edward Monfort. We are further informed and believe that these "Ronaele" Mustangs are exact replicas of the star character known as "Eleanor" from the motion picture "Gone in 60 Seconds."

Please be advised that Mr. Monfort and his entities do not own any rights or interest in "Eleanor" or any derivation thereof, and do not have the right to license the same to your companies. Rather, the Halicki Parties own the exclusive rights to the copyright, trademark, trade dress (which includes the look) of the character of "Eleanor" from the motion picture, "Gone in 60 Seconds" – both the original and the remake – for purposes of merchandising. They alone own the right, among other things, to produce, manufacture, market and sell any vehicle bearing the name and/or look of "Eleanor." For this reason, the Halicki Parties have filed a lawsuit in federal court against Mr. Monfort and his entities for, among other things, trademark infringement and copyright infringement.

Accordingly, the Halicki Parties demand that, within ten (10) calendar days of your receipt of this letter, you:

(1) confirm in writing that you will immediately and forever cease and desist from using the name "Ronaele" for any purpose relating to automobiles;

(2) confirm in writing that you will immediately and forever cease and desist from creating, manufacturing, producing, marketing or selling any vehicles (electric or otherwise) or kits for vehicles bearing the name, look or character of "Eleanor" from "Gone in 60 Seconds";

(3) confirm in writing that you will immediately and forever cease and desist from consulting or acting in concert with, participating in or assisting any other person or entity in the creation, manufacture, production, marketing or sale of any vehicles (electric or otherwise) or kits of vehicles bearing the name, look or character of "Eleanor" from "Gone in 60 Seconds"; and

(4) provide copies of all financial records and documents relating to the costs, sales, profits and other financial data for the Ronaele vehicles produced by you.

If we do not receive confirmation of each of the above within ten (10) calendar days of your receipt of this letter, please be advised that the Halicki Parties will take all necessary action to preserve and enforce their rights against you, including, but not limited to, initiating legal action for copyright and trademark infringement and seeking relief in the form of damages, punitive damages, and permanent injunction.

Govern yourself accordingly.

Very truly yours,

Allan Browne

AB/ic
cc: Sonia Y. Lee, Esq.

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

FILED
08 FEB 21 PM 3:47
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

I. (a) PLAINTIFFS

HST Automotive, LLC, a California Limited Liability Company, and Ronaele, Inc., a Nevada Corporation

(b) County of Residence of First Listed Plaintiff: San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Gary L. Eastman, Esq.
707 Broadway Street, Suite 1800, San Diego, CA 92101 (619) 230-1144

DEFENDANTS

Denice Halicki (individual); The Original Gone in 60 Seconds, LLC; Halicki Films, LLC; and Eleanor Licensing, LLC

County of Residence of First Listed Defendant: Los Angeles, CA
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

BY: DEPUTY

'08 CV 0337 JAH RBB

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☒ 4	☒ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☒ 820 Copyrights
- ☐ 830 Patent
- ☒ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing **(Do not cite jurisdictional statutes unless diversity)**:
Copyright Act, Title 17 U.S.C., and Trademark Act, Title 15 U.S.C.

Brief description of cause:
Declaratory Judgment action for Trademark, Trade Dress, and Copyright NON infringement.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE ______ DOCKET NUMBER ______

DATE: 2/19/2008

SIGNATURE OF ATTORNEY OF RECORD: [signature]

FOR OFFICE USE ONLY

RECEIPT # 147936 AMOUNT $350 APPLYING IFP ______ JUDGE ______ MAG. JUDGE ______

Sa 2/21/08

UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

# 147936 - SH

February 21, 2008
15:47:17

Civ Fil Non-Pris
USAO #.: 08CV0337
Judge..: JOHN A HOUSTON
Amount.: $350.00 CK
Check#.: BC2325

Total-> $350.00

FROM: HST AUTOMOIVE V. HALICKI ET AL